



SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

STIPULATED SURROGACY CASE INFORMATION SHEET

The information provided in this document is intended to assist attorneys in understanding the various documents required and procedures typically followed by the court in a standard stipulated surrogacy case. The information should be considered only as a guideline to help achieve the most efficient processing of the case. While the court has tried to provide as much useful information as possible, each case must be treated on an individual basis. This information is not to be considered or construed as legal advice or court policy.

Surrogacy is a form of assisted conception in which a woman agrees to bear a child usually for a couple with the intention that the couple will become the legal parents of the child. A surrogacy action declares that the intended parents of the child are the child's legal parents. While surrogacy cases are likened to an adoption for purposes of heightened privacy protections, the case is filed under the Uniform Parentage Act, Family Code section 7630(f). The case is *confidential* by operation of law under Family Code section 7643. The court file is not *sealed* until a motion is heard and the court makes the findings and order pursuant to California Rules of Court, rule 2.551. Absent a court order sealing the file, including the judgment, recaptioning the case, and removing the parties' true names from the public and court indexing systems, the judgment and the true names of the parties remain accessible to the public.

CHECKLIST: The following is a list of all the documents which should be part of the stipulated surrogacy packet submitted to the court:

1. **Verified Petition to Declare Maternity and Paternity** [per Fam. Code § 7600 *et seq.*] Generally this is a pleading drafted by counsel because there is no Judicial Council form. The Judicial Council paternity petition forms are not appropriate and will likely not be accepted by the judicial officer. The petition must contain all of the following:
 - a. Identity of the parties to the surrogacy contract.
 - b. The existence of a surrogacy contract.
 - c. The identity of the surgeon/physician and the approximate date of medical procedures undergone by surrogate to become pregnant.
 - d. The willingness of surrogate and husband, if she is married, to relinquish the child to the petitioner(s).
 - e. A request that the birth certificate reflect the petitioner(s)' name(s) as the child's parent(s).
2. **Verified Response** by surrogate and/or her spouse.
3. **Certificate of Assignment.** SDSC Form #D-049. Mandatory form.
4. **Advisement and Waiver of Rights Re: Establishment of Parental Relationship.** JC Form #FL-235. Optional form if the petition contains sufficient recitations.
5. **Appearance, Stipulations, and Waivers.** JC Form #FL-130. Mandatory form with original signatures.
6. **Surrogacy Contract.** The original contract must have original signatures of all the parties. No faxed or photo-copied signatures will be accepted. The original contract will be lodged with court and returned with the signed judgment.
7. **Declaration of Surgeon/Physician.** Required under Family Code section 7613(a). Must contain complete information regarding medical license and the procedures used to impregnate surrogate.
8. **Declaration of Surrogate.** Preferred by court because it should contain recitations by surrogate alone regarding her understanding of the contract with the petitioners and her intention to relinquish the child she is carrying for them. It should also contain her affirmation of residency in San Diego County.
9. **Declaration of Surrogate's Spouse.** Required under Family Code section 7613. It must contain a statement relinquishing all parental rights to the child surrogate is carrying.
10. **Motion to Seal Court File, Recaption Case, and Remove Parties' True Name from Public Index.** The motion is not required for a judgment. However, if filed, the motion must include a memorandum of points and authorities citing California Rules of Court, rules 2.550, 2.551, and a valid argument (found in the court's model order) with facts to support the required express findings for the sealing order.
11. **Order Sealing Court File.** The court will make specific findings, as required, which must be contained in the order. *See court's model order.*
12. **Stipulation for Entry of Judgment.** Drafted by counsel to contain the specifics of the particular case. It must have original signatures of all parties.

13. **[Proposed] Judgment Declaring Existence of Maternity and Paternity.** May be a pleading drafted by counsel, or the Judgment – Uniform Parentage (JC Form #FL-250) may be adapted and used as the judgment. Whether using a pleading or the form, it should contain language that the enforcement of the judgment will be stayed until the child's birth pursuant to Family Code section 7633. The court encourages attorneys to submit the proposed judgment and all related papers as soon as the fetus is viable.
14. **Notice of Entry of Judgment.** JC Form #FL-190. Mandatory form which must also include two self-addressed envelopes large enough to return all papers and with either sufficient postage or an attorney service messenger slip.

PROCEDURES: The following procedures will generally be followed by the court in all stipulated surrogacy cases:

1. **Initial Filing.** Upon the initial filing, the case will be internally coded as a paternity action to ensure the court file is treated as confidential. The court file will be stamped "confidential" on the front cover. The parties' true names will be entered in the court's and public's computer index system and will remain in the systems until an order is signed sealing the file, recaptioning the case as "Surrogacy v. Doe," and removing the parties' true names from the computer systems.
2. **Fees.**
 - a. One first paper fee per side, regardless of number of petitioners and respondents.
 - b. Motion fee for motion to seal, recaption, and remove true names. Note: A motion to seal is not required. Absent an order sealing and removing the true names, the case remains "confidential" and will be treated as such under the law meaning the judgment and the parties' true names remain available to the public.
3. **Motion to Seal, Recaption, and Remove True Names.**
 - a. If a motion to seal is filed, a hearing date will generally be set within 30 days. The attorney can request an order shortening time by ex parte application. Motions to seal will be posted online and outside the courtroom with the parties' true names until the order sealing, recaptioning, and removing true names is granted.
 - b. The entire file, including the judgment if requested in the motion, will be sealed upon findings pursuant to the California Rules of Court, rule 2.551. Only after receiving the court's order, the clerk will (1) redesignate the file as "sealed" and treat it accordingly; (2) recaption the case as "Surrogacy v. Doe"; and (3) remove the parties' true names from the court's and public's computer index systems.
 - c. The court has a "model" sealing order which contains the requisite findings under the rules of court if the findings are supported by the facts submitted with the motion papers. The model order is not mandatory.
4. **Judgment.**
 - a. If no motion to seal is filed, the judgment packet may be left in the "drop box" in the business office. The clerk will review the packet against the checklist of documents and will return the packet to the attorney if it is incomplete. If complete, the packet will be submitted to the judicial officer for review and signature. If there are any questions, the judicial officer may set a hearing. Counsel will be notified of the date and time.
IMPORTANT: A judgment packet left in the "drop box" may take at least 60 days or more for judicial review, signing, and return. The court cannot assure a "drop box" judgment will be processed before the baby is born if it is submitted too close to the due date. Again, the court encourages the judgment packet with no motion to seal be submitted as soon as the fetus is viable.
 - b. **NOTICE:** No judgment will be signed ex parte absent truly exigent circumstances as determined by the judicial officer. The declaration in support of the ex parte application must contain the date the attorney was retained for the case, the date the surrogacy contract was signed by all parties, the expected due date of the child's birth, and why the judgment could not have been submitted on a timely basis.
5. **Venue.** Venue is the county where the child resides or is found which, in surrogacy cases, is where the surrogate mother resides. Any question as to the proper venue will be decided by the judicial officer. If the matter is wrongly filed in San Diego County, the attorney may still request an order sealing the file, recaptioning the case, and removing the parties' true names from the court and public index before the case is dismissed.
6. **Closed Courtroom.** A request for a closed courtroom during any hearing will be decided on a case-by-case basis.

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4 **Superior Court of the State of California**
5 **County of San Diego**
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7 JOHN SMITH and MARY SMITH

8 Petitioners,

9 and

10 JANE DOE [and JOE DOE]

11 Respondent(s).
12

) Case No. D

) [PROPOSED] ORDER SEALING COURT
) FILE, INCLUDING JUDGMENT DECLARING
) THE EXISTENCE OF MATERNITY AND
) PATERNITY; RECAPTIONING CASE; AND
) REMOVING PARTIES TRUE NAMES FROM
) PUBLIC INDEXING SYSTEM

13 The above-entitled matter came on for hearing in accordance with the procedures set
14 forth in *California Rules of Court, rule 2.551*. This action is brought under the Uniform
15 Parentage Act, more specifically, *Family Code § 7630(f)*, and accordingly, is confidential by
16 operation of law pursuant to *Family Code § 7643*. However, the court, having heard and
17 considered all of the facts and evidence, finds that this stipulated surrogacy action has the
18 same overriding privacy interests as that of an adoption. The court further finds that the privacy
19 interests of the parties and the child(ren) born as a result of a surrogacy are the same as they
20 would be in an adoption matter and are worthy of heightened privacy protections. The court
21 further finds that the privacy interests of the child(ren) to be born of this stipulated surrogacy
22 arrangement between the Petitioners and Respondent(s) herein, and the privacy interests of
23 the parties override the right of public access to the court records, including the Judgment
24 Declaring the Existence of Maternity and Paternity herein. These overriding privacy interests
25 support sealing the entire court record and a substantial probability exists that this overriding
26 right to privacy will be prejudiced if the entire court record is not sealed.

27 Although the “public” may have, or even does have, an interest in knowing that
28 surrogacy arrangements are occurring in the State of California, and that in appropriate

1 circumstances when supported by the evidence, our courts are entering judgments therein
2 declaring that the “intended parents,” in such cases and arrangements, to be the “natural and
3 legal” parents of the surrogacy child(ren), such public interest is not so great or compelling as
4 to warrant unlimited access by any member of the public to the details of any particular
5 arrangement, including the names of the party participants, especially the unborn child(ren). To
6 that end, it is sufficient that the basic fact of the surrogacy nature of a case be readily
7 ascertainable from the public index. The court further finds that no less restrictive means exist
8 to achieve protection of the overriding privacy interests.

9 **THEREFORE, IT IS ORDERED** that the entire court file and records of this action,
10 including the Judgment Declaring Existence of Maternity and Paternity, be sealed and treated
11 accordingly under the law.

12 **IT IS FURTHER ORDERED** that the true names of the parties be stricken from the
13 register of actions, the court’s automated Case Management System of the Court and the
14 Public Index; and that this action be given the new caption of “Stipulated Surrogacy v. Doe.”
15 The Clerk of Court shall perform all ministerial acts necessary in the court’s internal indexing
16 system to strike the true names of the parties, recaption the case, and indicate that the entire
17 court file and records of this action have been sealed from the public record.

18 **IT IS FURTHER ORDERED** that the sealed records not be disclosed to any person,
19 except upon further order of the court; *provided, however*, that the court finds good cause to
20 authorize the parties and their attorneys of record to inspect the sealed record (including the
21 original court file, all of the pleadings in the court file, the Judgment Declaring the Existence of
22 Maternity and Paternity and all papers and records pertaining to the insemination, whether part
23 of the permanent record of the court or of a file held by the supervising physician and surgeon
24 or elsewhere), and to obtain photocopies of the sealed records without further court order.

25 **IT IS SO ORDERED.**

26 DATED:

27 _____
(name)
Judge of the Superior Court